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February 12, 1999

Ms. Magalie Roman Salas
Secretary, Federal Communication Commission
445 12th Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation of Covad Communications Company in CC
Docket No. 98-147, *In the Matter of Deployment of Wireline
Services Offering Advanced Telecommunications Capability*,

Dear Ms. Salas,

At the request of Valerie Yates of the FCC Common Carrier Bureau, on February 4, 1999, James D. Earl and Thomas M. Koutsky of Covad Communications Company met with Larry Strickling, Carol Matthey, Jordan Goldstein, Jonathan Askin, and Michael Pryor to discuss issues related to and discussed in Covad's comments filed in the Commission's CC Docket 98-147 and the attached documents.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.206(a)(2) of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Koutsky', written over a horizontal line.

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THE FCC'S PHYSICAL COLLOCATION AUTHORITY AFTER THE SUPREME COURT'S *IOWA* OPINION:

A SIMPLE RECOMMENDATION

*"Most of the bars we beat against are in ourselves—
we put them there, and we can take them down."*

Henry Ford

THE FCC'S PHYSICAL COLLOCATION AUTHORITY AFTER THE SUPREME COURT'S *IOWA* OPINION: A SIMPLE RECOMMENDATION

On January 25, 1999, the Federal Communications Commission and the United States Government achieved a tremendous victory that will advance the competitive provision of local telecommunications services nationwide. On that date, a majority of the U.S. Supreme Court ruled that the FCC has primary and plenary power to interpret Sections 251 and 252—the critical local competition provisions of the Telecommunications Act of 1996.¹ That decision reversed the Eighth Circuit's ruling in a case brought by various incumbent LECs and some state commissions that severely—and, the Supreme Court ruled, improperly—limited the scope of the FCC's rulemaking authority over these provisions.

The FCC now has the chance to fully implement the Act—through overarching federal regulatory supervision of the actions of incumbent LECs and application of those federal standards by state commissions.² In essence, the FCC has been given a grand “do over” in which it can, for the first time, actually apply its principles to real world situations, without the threat of incumbent LECs filing numerous court petitions.³

In seizing this opportunity, the FCC must remember that the purpose of the 1996 Act was to lower barriers to entry into local telecommunications markets. Physical collocation is one of several mechanisms established by the Act that are designed to permit new entrants to take advantage of the economies of scale, scope, connectivity and density solely enjoyed by incumbent LECs because of their decades of protected monopoly status.⁴ The ability of CLECs to collocate their equipment at incumbent LEC telecommunications premises on nondiscriminatory terms is a chief means of permitting CLECs to share the economies of scale, scope and density that incumbent LECs possess.

¹ *AT&T Corp. v. Iowa Util. Bd.*, Nos. 97-826 *et al.*, ___ U.S. ___ (Jan. 25, 1999) (hereinafter “*Iowa*”).

² If nothing else is clear from the Court's decision, it is that the 1996 Act is a *federal* law and it must be implemented in conformity with principles of its own terms and FCC regulations. Justice Scalia wrote: “[T]he question in this case is not whether the Federal Government has taken regulation of local telecommunications away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the states commissions' participation in the administration of the new *federal* regime is to be guided by federal-agency regulations.” *Id.* at n.6 (emphasis in original).

³ Since the Supreme Court vacated the Commission's rule 47 C.F.R. § 51.319, *Iowa* slip op. at 20-25, it is necessary for the Commission to revisit its interpretation of the “necessary and impair” standard of Section 251(d)(2) of the Act. For the sake of brevity, this Covad Working Paper No. 2 does not address that legal standard in detail.

⁴ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 at ¶ 11 (1996) (subsequent history omitted) (“As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants.”).

The Supreme Court decision came at a fortunate time. The very week the decision was announced, the FCC was set to issue rules governing the provision of advanced wireline services, which might have included important changes to its physical collocation and unbundling rules. Competitive carriers such as Covad have argued for these changes for several months, but incumbent LECs have disputed the Commission's authority to undertake that reform. Covad can think of no better time in which the Supreme Court could have clarified the Commission's absolute and preeminent authority over implementing Sections 251 and 252 than immediately prior to release of an Order in the *Advanced Wireline Services* proceeding—because now the Court's decision can be used by the Commission to bolster and strengthen adoption of pro-competitive policies.

With each passing day and week, the current collocation regime costs CLECs significant time and resources. For example, in Texas, SBC is subjecting CLECs to extraordinary delays in providing simple price quotes for collocation cages—and indeed SBC is not promising to provide price quotes for some Texas offices until the year 2000. At the same time, SBC has announced plans to provide its own ADSL service from over 500 central offices by the end of 1999.⁵

The Supreme Court opinion greatly clarifies the FCC's ability to undertake these needed collocation reforms. The Court decision makes it clear that the Commission has the clear authority to interpret and promulgate collocation rules pursuant to Section 251(c)(6) of the Act—rules that should include cageless physical collocation, flat rates for all forms of physical collocation, uniform national intervals, and a proper process for state commission adjudication of space disputes.

With its authority firmly in hand, the FCC should take immediate steps to reform its physical collocation regime. This Working Paper outlines a simple plan for implementing reform in an expeditious fashion.

⁵ See "Southwestern Bell Plans Major Launch of New Lightning-Fast Service for Data, Internet Access," http://www.swbell.com/News/Article.html?query_type=article&query=19990112-03 (Jan. 12, 1999). Clearly, SBC is directing substantial resources to collocating its own DSL equipment in its central offices while it is utterly failing to meet demand for collocation by CLECs that desire to provide competing services.

THE BROAD SCOPE OF COMMISSION AUTHORITY: SECTIONS 201(B) AND 251(C)(6)

The basis for the Supreme Court's *Iowa* decision is Section 201(b) of the Act, which gives the Commission the authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act." 47 U.S.C. § 201(b). The Court explicitly decided that this section "explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."⁶

Section 251(c)(6) of the Communications Act provides that incumbent LECs have—

[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

47 U.S.C. § 251(c)(6). Given the Supreme Court's decision, it is clear that the FCC has the explicit authority to determine whether the "rates, terms, and conditions" offered by ILECs for collocation "are just, reasonable, and nondiscriminatory." This authority naturally extends to drafting rules and requiring the filing of tariffs—the ultimate means of ensuring nondiscriminatory treatment.

Section 251(c)(6) also gives state commissions the authority to make a kind of determination as to practicality of a particular requested form of physical collocation or particular "space" disputes. However, it is clear from the Court's decision that the FCC can promulgate detailed rules that would limit the discretion of a state commission's activities pursuant to this provision. Because it is a *federal* telecommunications regime that state commissions would be implementing, the Court reasoned that it is clear that all state commission action undertaken pursuant to Sections 251 and 252 must be in line with federal law and FCC regulations.⁷

Therefore, it is fully consistent with the Court's interpretation of Section 251 for the FCC to implement *federal* rules implementing Section 251(c)(6) that ensure that state commissions may participate in implementing that policy only in concert with those overarching federal rules and procedures. Arguments by incumbent LECs that the FCC lacks jurisdiction or has limited jurisdiction over their collocation practices no longer withstand serious scrutiny.

⁶ *Iowa*, slip op. at 12. Justice Scalia stated, "Congress has broadly extended its law into the field of intrastate telecommunications" *Id.* at n.10.

⁷ The Court ruled that "[t]his is, at bottom, a debate not about whether the States will be allowed to do their own thing, but about whether it will be the FCC or the federal courts that draw the lines to which they must hew." *Iowa* slip op. at n.8.

REVIVING THE *EXPANDED INTERCONNECTION* TARIFFS

So, what should the FCC do now?

The FCC's August 1998 *Advanced Wireline Services NPRM*⁸ outlined several proposals for reforming the physical collocation process. In its September 25, 1998 Comments to the FCC, Covad proposed several detailed rule changes that Covad believes would promote the availability of competitive innovative services throughout the country.⁹

Covad believes that the FCC should act resolutely to implement those rules and take additional steps proposed by other members of the competitive community as soon as possible. The most pro-competitive manner in which the FCC could implement those changes would be to write reformed collocation rules and also require incumbent ILEC to make conforming amendments to existing *Expanded Interconnection* tariffs within thirty days of the effective date of the FCC's Order.¹⁰

Requiring modifications to ILEC *Expanded Interconnection* tariffs—rather than subjecting CLECs to additional delay by limiting application of reformed collocation rules to laborious re-negotiation of interconnection agreements—is appropriate for several reasons.

- *First*, as discussed by Covad in its Comments, the collocation provisions of many, if not most, interconnection agreements directly reference already-filed collocation tariffs by the incumbent LEC. Given its aggressive physical collocation plans, Covad has repeatedly tried to negotiate alternative terms and conditions for physical collocation in its interconnection agreements and Covad has been told by several ILECs that those ILECs will provide collocation only pursuant to filed tariffs.¹¹

⁸ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, __ FCC Rcd __ (rel. Aug 7, 1998) (hereinafter *Advanced Wireline Services NPRM*).

⁹ Covad's proposed rules are attached.

¹⁰ *Expanded Interconnection with Local Telephone Company Facilities*, First Report and Order, 7 FCC Rcd 7369 (1992), *vacated in part and remanded*, *Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994); First Reconsideration, 8 FCC Rcd 127 (1993), *vacated in part and remanded*, *Bell Atlantic v. FCC*, 24 F.3d 1441; Second Reconsideration, 8 FCC Rcd 7341 (1993); Second Report and Order, 8 FCC Rcd 7374 (1993), *vacated in part and remanded*, *Bell Atlantic v. FCC*, 24 F.3d 1441; Remand Order, 9 FCC Rcd 5154 (1994), *remanded*, *Pacific Bell v. FCC*, 81 F.3d 1147 (D.C. Cir. 1996), *further recon. pending* (collectively referred to as *Expanded Interconnection*).

¹¹ Indeed, Covad has found that when it enters a market, it soon becomes one of the largest collocators in that market. Although Covad attempts to warn incumbent LECs of the scale of its massive collocation program during interconnection negotiations, most ILECs do not appear to believe Covad's warnings.

- *Second*, the *Expanded Interconnection* tariffs would be available to all requesting carriers and therefore would be available regardless of the status of current or future interconnection agreements. CLECs in the process of negotiating agreements could order collocation services pursuant to the federal tariff. The universal availability of federally-tariffed physical collocation would therefore advance deployment of competitive services because it would permit CLECs to begin to construct their networks while negotiating an interconnection agreement.
- *Third*, the purpose Section 251(c)(6) was to reverse prior judicial rulings that the FCC did *not* have authority to order physical collocation in the *Expanded Interconnection* proceeding. Despite those rulings, many ILECs, such as Pacific Bell and Bell Atlantic, today file and maintain federal physical collocation *Expanded Interconnection* tariffs. Thus, it is clearly appropriate that the FCC use its currently-existing *Expanded Interconnection* tariffs as the starting point for implementing modernized physical collocation policies pursuant to Section 251(c)(6) and Section 201(b).
- *Fourth*, the FCC tariff process can be a much more efficient means of ensuring that the pro-competitive goals of physical collocation be implemented faithfully and uniformly by ILECs. By examining these tariffs, the FCC can investigate the rates charged for collocation and ensure that collocation be offered on a flat-rated, region-wide basis by incumbent LECs pursuant to national standards. The FCC can also benchmark physical collocation terms of ILECs simultaneously, furthering implementation of the model advanced by the NTIA in the *Advanced Wireline Services* proceeding.
- *Fifth*, there is adequate administrative notice in the *Advanced Wireline Services NPRM* to take such an action. Indeed, the FCC explicitly asked to what extent the *Expanded Interconnection* collocation tariffs could be modified or used to promote the deployment of advanced services.¹²

Therefore, Covad believes that the public interest would be served by the FCC immediately ordering incumbent LECs to make the following changes to their *Expanded Interconnection* tariffs¹³—

¹² The *Expanded Interconnection* rules were adopted pursuant to the Commission's authority under Section 201 of the Act, and the *Advanced Wireline Services NPRM* explicitly requests comment on applying "additional national rules for collocation pursuant to sections 201 and 251." *Advanced Wireline Services NPRM* at ¶ 123; *id.* at ¶ 64 ("[W]e agree with ALTS that we should build upon our current physical and virtual collocation requirements adopted in the *Expanded Interconnection* and *Local Competition* proceedings to ensure that our rules promote, to the greatest extent possible, the rapid deployment of advanced telecommunications capability to all Americans.").

¹³ The Attachment describes many of these proposals in more detail.

- ILECs that only provide for virtual collocation in their *Expanded Interconnection* tariffs should be required to provide physical collocation.
- The revised physical collocation tariffs should make physical collocation available to “requesting telecommunications carriers” for purposes of collocation of equipment used and useful for interconnection or access to unbundled network elements.¹⁴
- The revised physical collocation tariffs should allow requesting carriers to choose from the following options for physical collocation: cageless physical collocation, common area physical collocation, shared cage physical collocation, and cage-based physical collocation.
- The revised tariffs should recognize and incorporate the pro-competitive actions of several state commissions in the collocation area by including a clause that would permit requesting carriers to purchase physical collocation pursuant to the rates, terms and conditions of the relevant state intrastate collocation tariff and use that collocation space for interconnection and access to unbundled network elements if the requesting carrier so chooses.
- The revised tariffs should establish ILEC-wide, flat rates for all four forms of physical collocation (cageless, common, shared and caged). Flat rates (as opposed to today’s proliferation of “individual case basis” charges) would promote the deployment of advanced services by CLECs by making the costs of collocation predictable and certain. This would allow CLECs to make expansion plans based on the economics of entry and consumer demand and not be subject to the charge the local ILEC feels it can “get away with” in a particular jurisdiction. Several states (such as Massachusetts and New Hampshire) have flat rated collocation in place.
- Assess necessary common infrastructure costs only on a pro rata basis (that is, no “first-in” penalty for the first carrier that requests collocation in an office).
- For all forms of collocation, require that ILEC and requesting carrier each independently bear the cost of the security measures they so choose to adopt.
- Permit requesting carriers to collocate all equipment used and useful in interconnection or access to unbundled network elements; no restrictions on collocation of “switching equipment” would be permitted in the tariffs.
- Establish uniform physical collocation application procedures and construction intervals for each form of physical collocation, including—
 - Cageless physical collocation: 45 calendar days from application
 - Cage-based physical collocation, no common area infrastructure construction necessary: 45 calendar days from application
 - Cage-based physical collocation, common area infrastructure construction necessary: 90 calendar days from application
 - Common area physical collocation, no common area infrastructure construction necessary: 45 calendar days from application

¹⁴ The Commission should not disturb the current rights of end users and competitive access providers to acquire physical collocation for purposes of expanded interconnection.

- Common area physical collocation, common area infrastructure construction necessary: 90 calendar days from application
- Shared cage collocation: 45 calendar days from application
- “No space” exceptions to the physical collocation tariff will be granted on an application-by-application basis, based upon a procedure established by the tariff.
- ILECs will be required to maintain publicly-available listings of the space and collocation status of their central offices, including an update of amount space reserved for future specific use by the ILEC and a description of that future specific use. These listings will be available on the World Wide Web and will be updated frequently.
- All disputes received by the FCC regarding ILEC operations or terms of these tariffs will be resolved pursuant to an expedited complaint process.

As stated above, since many ILECs maintain physical collocation tariffs at the FCC, the proposal described above would involve only alterations to existing tariffs. Real implementation along the lines suggested would be efficient and lead the way to removing the various regulatory processes and procedures that have surrounded the “collocation debates” of the last two years. Today, CLECs and ILECs have to battle a bizarre, Balkanized structure of various collocation tariffs, and continually butt heads over different state pricing methods and space conditioning requirements.

State commissions are by no means shut out of the proposal outlined above. Indeed, by making available intrastate collocation tariffs available to requesting carriers under the proposed federal tariff revisions, states have a significant ability to establish different and even more-efficient standards for physical collocation in their states. That is the type of mechanism that the Commission desired when it proposed “national minimum standards” for physical collocation in August 1998. In addition, those state laboratories can help find even better practices that the FCC could eventually apply nationwide—precisely the model NTIA has urged upon the FCC in the *Advanced Wireline Services* proceeding.

IN CONCLUSION...

The Supreme Court has given the FCC a tremendous opportunity to jump start the availability of competitive broadband services nationwide. The Court’s decision supports swift and sure FCC action to utilize its preeminent authority to interpret the Act and cut through the trench warfare morass in which ILECs and CLECs are currently engaged.

With regard to physical collocation, revising existing ILEC federal collocation tariffs in the manner described above is the most rapid and efficient means of resolving the collocation issues that have cropped up over the last three years. This solution will avoid unnecessary disruption to existing interconnection agreements (many of which directly incorporate the federal tariffs anyway), will permit CLECs to begin network planning and network construction prior to and while conducting interconnection negotiations, will provide a clear, national collocation process to the benefit of both ILECs and CLECs,

will facilitate benchmarking of collocation practices nationwide, and will provide a fast, definitive and resolute means of remedying disputes.

The collocation solution advanced above would further the overarching purpose of the 1996 Act—to lower barriers to entry into local telecommunications markets by requiring ILECs to share the advantages of scale, scope, density and connectivity conferred on them by decades of protected monopoly status. In short, this solution would permit both CLECs and ILECs alike to halt their current collocation battles and get on with the business of building the telecom networks of the future.

About the Covad Working Paper Series

The Covad Working Paper Series is designed to discuss and address public policy, regulatory and economic issues as they relate to the development of the competitive market for advanced high-bandwidth digital services to American consumers. Prior papers in the Series are available at http://www.covad.com/about/public_policy.html.

For more information concerning Covad Communications Company and the TeleSpeed service visit <http://www.covad.com>, or email sales@covad.com. Telephone 408-844-7500 or 1-888-GO-COVAD; Fax 408-844-7501.

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COVAD PROPOSED COLLOCATION RULE REVISIONS
Filed with FCC on September 25, 1999 in CC Docket No. 98-147

47 C.F.R. § 51.5 (Terms and Definitions) shall be amended by replacing the definitions of "Physical Collocation" and "Premises" as follows—

Physical Collocation. *Physical collocation* is required by Section 251(c)(6) of the Act. Multiple technically feasible forms of physical collocation shall be made available by incumbent LECs, as described in 51.323(a) of these Rules. All forms of physical collocation enable a requesting telecommunications carrier to:

- (1) Place any equipment, including switching equipment, CPE and other equipment, used or useful for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;
- (2) Use all the features, functions and capabilities of such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC's unbundled network elements for the provision of any telecommunications service;
- (3) Enter those premises, subject to reasonable terms and conditions permitted by Section 51.323 of these Rules, to install, maintain, and repair equipment used or useful for interconnection or access to unbundled elements; and
- (4) Obtain reasonable amounts of space (in single-bay increments) within or upon an incumbent LEC's premises, as provided in this part, for the equipment used or useful for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

Premises. *Premises* refers to an incumbent LEC's central offices and serving wire centers, as well as all buildings and structures owned or leased by an incumbent LEC to house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to terminals and vaults containing loop concentrators, or similar structures, as well as all land or space owned or leased by an incumbent LEC around such central offices, serving wire centers, buildings and structures.

47 C.F.R. § 51.321 shall be amended by replacing subsections (b), (c), (d), (e), (f) and (h) as follows—

- (b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:
 - (1) Physical collocation and virtual collocation at the premises of an incumbent LEC (including all forms of physical collocation as defined by Section 51.323(a) of these Rules); and
 - (2) Meet point interconnection arrangements.
- (c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on the network of a telecommunications carrier (including any particular form of physical collocation as defined in Section 51.323(a)) is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points on any incumbent LEC's network.
- (d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network (including any particular form of physical collocation as defined in Section 51.323(a)) shall notify the state commission of the dispute within five (5) days, and must prove to the state commission with clear and convincing evidence that the requested method of obtaining interconnection or access to unbundled network elements at the requested point is not technically feasible. In the event that the state commission does not enter a decision in this dispute within sixty (60) days of the incumbent LEC's denial, any party to the dispute may request the Commission to act pursuant to the procedures of Sections 51.801, *et seq.* of these Rules. A state commission's application of a different legal standard or burden of proof in resolving a dispute pursuant to this subsection shall constitute a failure of the state to carry out its responsibility under section 252 of the Act, and any party in that proceeding may immediately request the Commission to act pursuant to the procedures of Sections 51.801, *et seq.* of these Rules.
- (e) An incumbent LEC shall be required to provide for any technically feasible form of physical collocation of equipment used or useful for interconnection or access to unbundled network elements within or upon a particular incumbent LEC premises until it demonstrates with clear and convincing evidence to the state commission (and the state commission finds that the incumbent LEC has met this burden within sixty (60) days of the incumbent LEC's demonstration) that the requested form of physical collocation within or upon that particular premises is not practical for technical reasons or because of space limitations. The incumbent LEC must make the demonstration required by this subsection within thirty (30) days of rejecting

any application for any form of physical collocation within or upon any premises of that incumbent LEC by any requesting telecommunications carrier. This demonstration must contain clear and convincing evidence that the incumbent LEC is in full compliance with the requirements of Section 51.323(f) (including Sections 51.323(f)(3), (4), (5), (8), (9), and (10)) of this part. The incumbent LEC shall serve this demonstration upon all requesting telecommunications carriers who have applied for any form of physical collocation at that particular incumbent LEC premises within twelve (12) months of the date of the demonstration and upon all entities that have already established any form of physical collocation at the particular incumbent LEC premises. In such cases where the state commission finds that the incumbent LEC's demonstration has met its burden within sixty (60) days of the filing required by this subsection, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible by clear and convincing evidence. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible. In the event that the state commission does not act within sixty (60) days of receiving a incumbent LEC filing made pursuant to this subsection, any party in that proceeding may request the Commission to act pursuant to the procedures of Sections 51.801, *et seq.* of these Rules. A state commission's application of a different legal standard or burden of proof in a proceeding initiated pursuant to this subsection shall constitute a failure of the state to carry out its responsibility under section 252 of the Act, and any party in that proceeding may immediately request the Commission to act pursuant to the procedures of Sections 51.801, *et seq.* of these Rules.

- (f) As part of the demonstration required by subsection (d) or (e) above, an incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. Subject to an appropriate protective order requested by the incumbent LEC, the incumbent LEC shall provide a copy of these detailed floor plans or diagrams to all requesting telecommunications carriers served by the incumbent LEC's demonstration and to any interested party within five days of the interested party's request.

* * *

- (h) Within five (5) business days of rejecting any application by a requesting telecommunications carrier for any form of physical collocation of equipment at the incumbent LEC's premises for technical reasons or because of space limitations, the incumbent LEC shall (subject to an appropriate protective order) provide, upon request, the requesting carrier detailed floor plans or diagrams of the particular premises and permit the requesting

telecommunications carrier to tour the particular premises during regular business hours.

Section 51.323 (Standards for Physical Collocation and Virtual Collocation) is amended by replacing current subsections (a), (b), (c), (f), (i) and (j) and inserting new subsections (k) and (l) as follows—

- (a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.
 - (1) An incumbent LEC has the obligation to provide requesting telecommunications carriers with any technically feasible physical collocation arrangement, pursuant to the procedures of Section 51.321 of these Rules, including, but not limited to, cageless physical collocation, CEV hut collocation, and shared cage collocation.
 - (2) As used in this part, “cageless physical collocation” is a form of physical collocation in which a requesting telecommunications carrier has the ability to place its own equipment in single bay increments within or upon already-conditioned floor space an incumbent LEC’s premises. The requesting telecommunications carrier may (i) use all the features, functions and capabilities of such equipment to interconnect with an incumbent LEC’s network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC’s unbundled network elements for the provision of a telecommunications service; (ii) enter those premises, subject to reasonable and nondiscriminatory terms and conditions, to install, maintain, and repair such equipment; (iii) obtain single-bay increments of conditioned floor space within or upon the incumbent LEC’s premises for equipment used or useful for interconnection or access to unbundled elements, allocated on a first-come, first-served basis, as required by this part; and (iv) reserve, on terms at least at parity with the incumbent LEC self-reservation policies, adjacent conditioned space for an additional three bays of equipment for up to three months.
 - (3) As used in this part, “CEV hut collocation” is a form of physical collocation in which a requesting telecommunications carrier has the ability to place its own equipment in a controlled environmental vault (“CEV” hut) within or upon an incumbent LEC’s premises. The CEV hut may be designed or otherwise procured and installed by the requesting telecommunications carrier. An incumbent LEC shall provide power, cabling and other physical collocation services and facilities to requesting telecommunications carriers on nondiscriminatory terms. An incumbent LEC shall not require the requesting telecommunications carrier to trench or have trenched any cabling or conduit connecting the CEV hut to the incumbent LEC premises.

- (4) Shared cage collocation is an arrangement in which a physical collocation node is shared by two or more requesting telecommunications carriers pursuant to terms and conditions agreed to by those carriers. Within ten (10) business days of being notified that two or more requesting telecommunications carriers are sharing a physical collocation node, the incumbent LEC shall accept, provision and bill separately orders for telecommunications services and/or unbundled network elements from all of the requesting telecommunications carriers sharing that single physical collocation node.
 - (5) To the extent technically feasible, incumbent LECs shall, at a minimum, afford all requesting telecommunications carriers parity in rates, terms and conditions for all forms of physical collocation. As used in this section, "parity" means that all requesting telecommunications carriers shall be subjected to only the same rates, terms and conditions in physically collocating equipment within or upon incumbent LEC premises as incurred by the incumbent LEC when it locates and operates its own equipment within or upon its premises.
- (b) An incumbent LEC shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements in the provision of a telecommunications service. Except as expressly approved by the Commission upon application by an incumbent LEC, an incumbent LEC may not impose any safety standards upon any type of equipment that a requesting telecommunications carrier seeks to collocate, and an incumbent LEC may not impose more-restrictive safety standards upon collocated equipment than it applies to similar equipment that it has placed within or upon any of its premises for similar purposes. If an incumbent LEC objects to collocation of any particular piece of equipment, the incumbent LEC must immediately make available to the collocating telecommunications carrier a list of all equipment (including make and model number) that it has accepted for collocation and a list of all equipment (including make and model number) that the incumbent LEC uses within or upon its premises. In the event an incumbent LEC objects to collocation of equipment by a collocating telecommunications carrier for purposes within the scope of the Act, the incumbent LEC also must, within five (5) days, file with the Commission, and serve upon the collocating telecommunications carrier via overnight delivery service, clear and convincing proof supporting that position. The Commission shall act within sixty (60) days of the incumbent LEC's filing made pursuant to this subsection. The incumbent LEC shall have the burden of proof in all disputes brought pursuant to this subsection, and the incumbent LEC may not prohibit, or take steps that effectively prohibit, the collocating telecommunications carrier from using any piece of equipment until the incumbent LEC obtains a decision from the Commission supporting the incumbent LEC's position in any dispute identified pursuant to this subsection. Equipment used and useful for interconnection and access to

unbundled network elements includes, but is not limited to, all features and functions of:

- (1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers;
 - (2) Digital Subscriber Line Access Multiplexers ("DSLAMS");
 - (3) Remote access management equipment, including equipment used to access and monitor this equipment;
 - (4) Rack-mountable digital packet switches, cross-connect equipment, and routers; and
 - (5) Equipment being collocated to terminate basic transmission facilities pursuant to Sections 64.1401 and 64.1402 of this chapter as of August 1, 1996.
- (c) Incumbent LECs shall not restrict collocating telecommunications carriers from utilizing any and all features and functions in rack-mountable, collocated equipment, including, but not limited to, any and all packet-switching or routing features and functions.

* * *

- (f) An incumbent LEC shall allocate space for the collocation of the equipment identified in paragraph (b) of this section pursuant to the following requirements:
- (1) An incumbent LEC shall, for physical collocation, make single-bay increments of space available within or upon its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space at central offices and wire centers to provide for physical collocation when existing space has been exhausted;
 - (2) An incumbent LEC shall, for virtual collocation, make space available within or upon its premises to requesting telecommunications carriers on a first-come, first-served basis;
 - (3) An incumbent LEC shall remove non-essential administrative offices, recreational space, and any obsolete or retired equipment within or upon its premises prior to denying a request for physical collocation on grounds of space limitations;
 - (4) To the extent technically feasible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;
 - (5) When planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand for collocation of equipment;
 - (6) If an incumbent LEC receives an application for physical collocation on an incumbent LEC premises and the incumbent LEC has sufficient amount of already-conditioned or prepared floor space anywhere within or upon that premises that would accommodate that application, the

incumbent LEC shall provide the requesting telecommunications carrier that space within 45 days and may only charge the requesting telecommunications the incremental power, cabling and floor space rental costs of establishing the collocation node in that space. In such event, the incumbent LEC shall not charge the requesting telecommunications carrier any proportionate, pro rata, or any other form of conditioning, room preparation, or other space preparation fees. The incumbent LEC shall construct a collocation cage or cabinet around that space only upon the request of the requesting telecommunications carrier. In the event the incumbent LEC does not believe that enough suitable, already-conditioned or prepared floor space is available, it shall, within five (5) days, notify the requesting telecommunications carrier of that belief, and the procedures of Section 51.321(e) shall apply to any dispute between the requesting telecommunications carrier and the incumbent LEC on this subject.

- (7) In the event the incumbent LEC is required to condition or otherwise prepare additional floor space in response to a particular request for physical collocation, it may only charge the requesting telecommunications carrier the pro-rata share of conditioning costs associated with the amount of space requested;
- (8) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future uses on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use. In no event shall any incumbent LEC reserve more than three bays of space for longer than three months for itself or for any other entity. In the event an incumbent LEC retains a limited amount of floor space for its own specific future uses, it shall file every six (6) months with the appropriate state commission: (i) a list of its premises where it has exercised its rights pursuant to this subsection; (ii) the amount and location of floor space it has retained in each of these premises; (iii) a description of the specific future use for which the incumbent LEC has retained said space; and (iv) a detailed floor plan or diagram of the particular incumbent LEC premises. Subject to an appropriate protective order, these filings shall be served upon any requesting telecommunications carrier that has applied for physical collocation in that particular LEC premises in the past six (6) months and upon all entities that have established a collocation node at that particular premises. Other requesting telecommunications carriers may obtain copies of these filings subject to an appropriate protective order;
- (9) An incumbent LEC shall relinquish any space held for future use pursuant to this subsection before denying any request or application for physical collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission pursuant to Section 51.321(e) of these Rules that physical collocation at that point is not technically feasible; and

- (10) An incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary with respect to particular premises.

* * *

- (i) With regard to all forms of physical collocation, an incumbent LEC may, at its own expense and without subjecting the requesting telecommunications carrier to any delay in obtaining collocation space, require reasonable and nondiscriminatory security arrangements. Reasonable security arrangements may include security escorts, background checks, key card entry systems, video surveillance systems, equipment cabinets or lockers and alarms. These security arrangements shall not, however, be any more stringent or limiting than similar security arrangements that the incumbent LEC maintains at its premises for its own employees or employees of authorized contractors with access to similar incumbent LEC premises. Incumbent LECs may require requesting telecommunications carriers to install, maintain or repair equipment collocated pursuant to cageless physical collocation (as defined in this section) pursuant to nondiscriminatory "safe-time" work policies, if the incumbent LEC utilizes the same policies for installation, maintenance or repair of its own telecommunications equipment. Evidence that the incumbent LEC requires more stringent or different security arrangements or work policies upon collocated telecommunications carriers than it requires for its own employees or employees of authorized contractors with access to similar incumbent LEC premises shall be *prima facie* evidence of discrimination and a violation of this rule and may be addressed by the Commission's enforcement procedures. In no event shall an incumbent LEC, based on security or any other concern, refuse to provide or delay the provision of any form of physical collocation (including cageless physical collocation) to a requesting telecommunications carrier. In no event shall an incumbent LEC, based on security or any other concern, require a requesting telecommunications carrier to pay for or await space, floor or room conditioning work if already-conditioned space is available within or upon the premises on a single-bay increment. In no event shall an incumbent LEC's security arrangements or other policies unduly restrict or hinder the ability of the requesting telecommunications carrier to maintain a high level of customer service, including, but not limited to, security arrangements that would unduly limit, restrict or effectively prohibit the ability of a requesting telecommunications carrier to repair collocated telecommunications equipment at any time to correct as soon as possible a service outage or service impairment.

- (j) An incumbent LEC shall permit a requesting telecommunications carrier to subcontract all work associated with the provision of any form of physical collocation, including, but not limited to the room, floor or space conditioning or preparation (e.g., HVAC, asbestos removal, etc.) with contractors approved by the incumbent LEC; provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall occur within thirty (30) days of application to the incumbent LEC and shall be based on the same criteria it uses in approving contractors for its own purposes.
- (k) Within six months of the effective date of these rules, all incumbent LECs shall create, maintain and make available (upon request and posted on the Internet) a report of the collocation space availability status in each of their central offices, wire centers, or comparable facilities. This report shall include the following information for each premises: (i) address, town and state; (ii) CLLI code; (iii) number of entities with established physical collocation arrangements; (iv) number of entities with established virtual collocation arrangements; (v) total amount of floor space supporting physical collocation arrangements; (vi) amount of already-conditioned floor space (listed in bays) available for collocation; (vii) all forms of physical collocation (including, but not limited to cageless and CEV) and virtual collocation that are available on the premises; (viii) amount of floor space being retained by the incumbent LEC for future specific uses pursuant to subsection (f); (ix) amount of floor space devoted to collocation arrangements that are currently in process; and (x) measures the incumbent LEC is taking to comply with Section 51.323 of these Rules and make additional space available for physical collocation. The incumbent LEC shall update this report every six months and whenever the incumbent LEC installs, replaces, retires or removes equipment from the premises.
- (l) Except as explicitly provided in this part, all disputes related to the rates, terms and conditions of all forms of physical and virtual collocation shall be resolved by application or complaint to the Commission

Execution Original

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of June 26, 1998

by and between

**AMERITECH INFORMATION INDUSTRY SERVICES,
a division of Ameritech Services, Inc.
on behalf of and as agent for Ameritech Illinois**

and

COVAD COMMUNICATIONS COMPANY

10.17.3 To the extent provided under the Telephone Consumer Protection Act (47 U.S.C. §227) and regulations thereunder, Requesting Carrier or Requesting Carrier's Customers shall not utilize Resale Services for the purpose of soliciting by recorded message when such solicitation occurs as a result of unrequested calls initiated by the solicitor by means of automatic dialing devices. Such devices, with storage capability of numbers to be called or a random or sequential number generator that produces numbers to be called and having the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called and which are calling party or called party controlled, are expressly prohibited.

10.17.4 The Resale Services shall not be used in any manner that interferes with any other person in the use of such person's Telecommunications Service, prevents any person from using its Telecommunications Services, impairs the quality of Telecommunications Service to other carriers or to either Party's Customers, causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment.

10.17.5 If Requesting Carrier's use of Resale Services interferes unreasonably with the Resale Services of other carriers or their customers or Ameritech or Requesting Carrier's Customers, Requesting Carrier shall be required to take Resale Services in sufficient quantity or of a different class or grade to correct such interference.

10.17.6 The determination as to whether any local exchange Telecommunications Service provided by Requesting Carrier to its Customer through Resale Services should be classified as a business service or residential service shall be based on the character of the use to be made of such service by Requesting Carrier's Customer.

ARTICLE XI NOTICE OF CHANGES -- SECTION 251(c)(5)

If a Party makes (i) a change in its network that will materially affect the interoperability of its network with the other Party or (ii) changes Operations Support Systems functions that affect the operations of the other Party, the Party making the change shall provide reasonable advance written notice of such change to the other Party within such time period as determined by the FCC or the Commission and their respective rules and regulations.

ARTICLE XII COLLOCATION -- SECTION 251(c)(6)

12.1 Physical Collocation. Ameritech shall provide to Requesting Carrier Physical Collocation on its Premises for equipment necessary for Interconnection (pursuant to Article III) or for access to unbundled Network Elements (pursuant to Article IX), except that Ameritech will provide for Virtual Collocation of such equipment if Ameritech demonstrates to the

Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act. Ameritech shall provide Requesting Carrier Collocation only for the purpose of Interconnection or access to Ameritech's unbundled Network Elements and for no other purpose other than as specifically provided by the Act, the Commission or the FCC.

12.2 Virtual Collocation in Physical Collocation Space. Where Requesting Carrier is Virtually Collocated on the Effective Date in a space that was initially prepared for Physical Collocation, Requesting Carrier may elect to (i) retain its Virtual Collocation on that Premises and expand that Virtual Collocation according to current procedures and applicable tariffs or (ii) revert to Physical Collocation, in which case Requesting Carrier shall coordinate with Ameritech for rearrangement of its transmission equipment and facilities, for which Ameritech shall impose no conversion charge. All applicable Physical Collocation recurring charges shall apply.

12.3 Virtual Collocation in Virtual Collocation Space. Where Requesting Carrier is Virtually Collocated in a space that was initially prepared for Virtual Collocation, Requesting Carrier may elect to (i) retain its Virtual Collocation in that space and expand that Virtual Collocation according to current procedures and the terms and conditions of this Agreement or (ii) unless it is not practical for technical reasons or because of space limitations, convert its Virtual Collocation to Physical Collocation at such Premises, in which case Requesting Carrier shall coordinate the construction and rearrangement with Ameritech of its transmission equipment and facilities for which Requesting Carrier shall pay Ameritech at the rates set forth at Item VII of the Pricing Schedule. In addition, all applicable Physical Collocation recurring charges shall apply.

12.4 Nondiscriminatory Collocation. Collocation shall be made available to Requesting Carrier by Ameritech on a basis that is at parity to the priorities that Ameritech provides to itself, its subsidiaries, Affiliates or other persons. The quality of design, performance, features, functions and other characteristics of Collocation made available to Requesting Carrier under this Agreement shall be at parity to that which Ameritech provides in its network to itself, its subsidiaries, its Affiliates or other persons.

12.5 Eligible Equipment. Requesting Carrier may Collocate equipment necessary for Interconnection, or access to Ameritech's Network Elements, including the following types of equipment:

- (a) OLTM equipment;
- (b) multiplexors;
- (c) Digital Cross-Connect Panels;
- (d) Optical Cross-Connect Panels;
- (e) Digital Loop Carrier (utilizing transmission capabilities only);

- (f) Data voice equipment;
- (g) Equipment for signal regeneration (“hubbing equipment”); and
- (h) any other transmission equipment collocated as of August 1, 1996 necessary to terminate basic transmission facilities pursuant to 47 C.F.R. §§ 64.1401 and 64.1402.

Requesting Carrier shall not Collocate switching equipment, equipment utilizing switching functionalities, or equipment used to provide enhanced services. If Requesting Carrier wishes to place in its Collocation space equipment that has or is capable of supporting any switching functionalities, Requesting Carrier shall (i) request Ameritech’s prior written approval that such equipment complies with the terms, conditions and restrictions of this Section 12.5 and (ii) disable any switching functionalities inherent in any equipment placed in its Collocation space. Ameritech may, upon twenty-four (24) hours’ notice, request an escorted inspection of Requesting Carrier’s Collocation space to confirm Requesting Carrier’s compliance with the terms of this Section 12.5.

12.6 Transmission Facility Options. For both Physical Collocation and Virtual Collocation, Requesting Carrier may either purchase unbundled transmission facilities (and any necessary Cross-Connection) from Ameritech or provide its own or third-party leased transmission facilities and terminate those transmission facilities in its equipment located in its Collocation space at Ameritech’s Premises.

12.7 Interconnection with other Collocated Carriers. Upon written request to Ameritech, Requesting Carrier shall be permitted to Interconnect its network with that of another collocating Telecommunications Carrier at Ameritech’s Premises by connecting its Collocated equipment to the Collocated equipment of the other Telecommunications Carrier via a Cross-Connection or other connecting transmission facilities (“Co-Carrier Cross Connect”) so long as (i) Requesting Carrier and the other collocating Telecommunications Carrier’s collocated equipment are to be used for Interconnection with Ameritech or for access to Ameritech’s Network Elements, (ii) Requesting Carrier provides the connection between the equipment in the Collocated spaces via a Cross-Connection or other connecting transmission facility that, at a minimum, complies in all respects with Ameritech’s technical and engineering requirements and (iii) the connecting transmission facilities of Requesting Carrier and the other collocating Telecommunications Carrier are contained wholly within space provided solely for Physical Collocation within Ameritech’s Premises. In the event that such Co-Carrier Cross Connection is used to connect with the Virtual Collocation equipment of Requesting Carrier or another Telecommunications Carrier, Ameritech shall provide the Cross Connect at the rates set forth at Item VII of the Pricing Schedule. If Requesting Carrier Interconnects its network with another collocating Telecommunications Carrier pursuant to this Section 12.7, Requesting Carrier shall, in addition to its indemnity obligations set forth in Article XXV, indemnify Ameritech for any Loss arising from Requesting Carrier’s installation, use, maintenance or removal of such connection with the other collocating Telecommunications Carrier, to the extent caused by the actions or inactions of Requesting Carrier.

12.8 Interconnection Points and Cables.

Ameritech shall:

12.8.1 provide Requesting Carrier an Interconnection point or points physically accessible by both Ameritech and Requesting Carrier, at which the fiber optic cable carrying Requesting Carrier's circuits can enter Ameritech's Premises; provided that Ameritech shall designate Interconnection Points as close as reasonably possible to Ameritech's Premises;

12.8.2 provide at least two (2) such Interconnection points at Ameritech's Premises at which there are at least two (2) entry points for Requesting Carrier's cable facilities, and at which space is available for new facilities in at least two (2) of those entry points;

12.8.3 permit Requesting Carrier Interconnection of copper or coaxial cable if such Interconnection is first approved by the Commission; and

12.8.4 permit Requesting Carrier Physical Collocation of microwave transmission facilities, except where such Collocation is not practical for technical reasons or because of space limitations, in which case Ameritech shall provide Virtual Collocation of such facilities as required where technically feasible.

12.9 Allocation of Collocation Space.

12.9.1 Requesting Carrier may reserve Collocation space for its future use in Ameritech's Premises in accordance with the provisions of Schedule 12.9.1. Ameritech shall notify Requesting Carrier in writing if another Telecommunications Carrier requests Collocation space that is reserved by Requesting Carrier. Requesting Carrier shall within five (5) Business Days of receipt of such notice provide Ameritech either (i) written notice that Requesting Carrier relinquishes such space or (ii) enforce its reservation of space in accordance with the provisions of Schedule 12.9.1. Failure of Requesting Carrier to respond to Ameritech within the foregoing five (5) Business Day period shall be deemed an election by Requesting Carrier to relinquish such space.

12.9.2 Ameritech shall not be required to lease or construct additional space in a Premises to provide Requesting Carrier Physical Collocation when existing space in such Premises has been exhausted.

12.9.3 Requesting Carrier will provide Ameritech with a two (2)-year rolling forecast of its requirements for Collocation that will be reviewed jointly on a yearly basis by the Parties, in accordance with the planning processes described on Schedule 12.9.3. Ameritech will attempt to deliver Collocation pursuant to Requesting Carrier's forecasts to the extent that Collocation space is then available.

12.10 Security Arrangements. Requesting Carrier shall adopt, at the request of Ameritech and at Requesting Carrier's sole cost and expense, reasonable security arrangements

as designated by Ameritech to separate Requesting Carrier's Collocation space from Ameritech's facilities, including the construction of a collocation cage.

12.11 Subcontractor and Vendor Approval. Ameritech shall permit Requesting Carrier to subcontract the construction and build-out of Physical Collocation arrangements. If Requesting Carrier is working on equipment and/or facilities within its Physical Collocation cage, Requesting Carrier may select a vendor/subcontractor of its choice to perform such work. However, if any type of work is to be performed outside of Requesting Carrier's Physical Collocation cage, such work must be completed by an Ameritech-approved vendor and is subject to Ameritech's inspection upon completion of such work.

12.12 Delivery of Collocated Space.

12.12.1 Ameritech shall provide Requesting Carrier with a single point of contact for all inquiries regarding Collocation. Requesting Carrier shall request space for Collocation by delivering a Collocation Interconnection order form to Ameritech. Each order for Collocation shall include (i) the Premises in which Collocation is requested, (ii) the amount of space requested, (iii) the interoffice transmission facilities Requesting Carrier will require for such space, (iv) the equipment to be housed in such space, (v) Requesting Carrier's anticipated power requirements for the space, (vi) any extraordinary additions or modifications (*i.e.*, security devices, node enclosures, HVAC, etc.) to the space or to the Premises to accommodate Requesting Carrier's collocated equipment, (vii) the specific level of diversity for fiber and power cabling to and from the Collocated space and (viii) the date on which Requesting Carrier intends to initiate service from such space. Ameritech shall notify Requesting Carrier in writing within ten (10) Business Days of receiving Requesting Carrier's request for Collocation as to whether the requested space is available. If space is not available for Physical Collocation, Ameritech shall specify in its notice to Requesting Carrier when space for Physical Collocation will be made available to Requesting Carrier and shall offer to Requesting Carrier Virtual Collocation Space in accordance with **Section 12.12.3**. If intraoffice facilities will not be available for Collocation within three (3) months of receipt of Requesting Carrier's payment of the Initial COBO fee for Physical Collocation, or twelve (12) weeks after receipt of Requesting Carrier's request for Virtual Collocation pursuant to **Section 12.12.1**, then Ameritech shall provide written notification, within ten (10) Business Days after the initial walkthrough, as to when the intraoffice facilities will be made available.

12.12.2 Physical Collocation.

- (a) If space for Physical Collocation is immediately available at the time of Requesting Carrier's request, Ameritech shall include in its notice to Requesting Carrier (i) the space to be provided and (ii) whether Ameritech can deliver the space to Requesting Carrier by the date set forth in **Section 12.12.2(c)**.
- (b) If Requesting Carrier's requested Physical Collocation space is available, Ameritech and Requesting Carrier shall have an initial walkthrough of

such space within ten (10) Business Days after Ameritech's receipt of Requesting Carrier's Initial COBO Payment. Ameritech shall, within ten (10) Business Days after such initial walkthrough, provide documentation submitted to and received from contractors for any work being done on behalf of Requesting Carrier that will be billed as extraordinary expenses.

- (c) Ameritech shall deliver to Requesting Carrier the requested space on or before the later of (i) one hundred twenty (120) days from Ameritech's receipt of Requesting Carrier's request for Collocation, (ii) ninety (90) days from the receipt of Requesting Carrier's Initial COBO Payment (as provided on Schedule 12.12) and (iii) such other reasonable date that the Parties may agree upon if it is not feasible for Ameritech to deliver to Requesting Carrier such space within the foregoing intervals (such date of delivery referred to as the "Delivery Date").
- (d) Physical Collocation space ordered by Requesting Carrier will be made available to Requesting Carrier by Ameritech as more fully described in Section 1 of Schedule 12.12.
- (e) If Ameritech does not provide Requesting Carrier with its Collocated space by the Delivery Date and such delay is caused directly by Ameritech's actions or its failure to act (and not by a Requesting Carrier Delaying Event), Requesting Carrier shall receive a credit of 1/120th of its COBO payment for each day after the applicable Delivery Date that such Collocated space is not made available.
- (f) Ameritech may begin billing Requesting Carrier for recurring charges for the Collocated space on the date such space is made available to Requesting Carrier for occupancy (the "Occupancy Date"). Requesting Carrier shall vacate the Collocated space if either (i) Requesting Carrier fails to install within ninety (90) days of the Occupancy Date the equipment necessary for Interconnection and/or access to unbundled Network Elements to be housed in such space or (ii) Requesting Carrier fails to Interconnect to the Ameritech network within one hundred fifty (150) days of the Occupancy Date. If Requesting Carrier is required to vacate the space pursuant to this Section 12.12.2(f), Requesting Carrier shall vacate such space within ninety (90) Business Days of the earliest to occur of the foregoing events. If, after vacating a space, Requesting Carrier still requires Collocation in that Premises, Requesting Carrier shall be required to submit a new request for Collocation pursuant to the provisions of Section 12.12.1.
- (g) Physical Collocation will be subject to the additional rules and regulations set forth in Section 2.0 of Schedule 12.12, and Requesting Carrier shall pay all costs to provide such Collocation.

- (h) Ameritech shall provide positive confirmation to Requesting Carrier when construction of Requesting Carrier Collocation space is fifty percent (50%) completed. This confirmation shall also include confirmation of the scheduled completion date and Delivery Date. The Implementation Plan will include a process for determining when construction is fifty percent (50%) complete.
- (i) At Requesting Carrier's request Ameritech shall provide, within three (3) months after receiving Requesting Carrier's Initial COBO Payment, equipment node enclosures at a height of eight (8) feet, without ceiling. Where Ameritech cannot feasibly provide Requesting Carrier with equipment node enclosures within such three (3) month period, Ameritech shall notify Requesting Carrier of this fact within ten (10) Business Days from the later of (i) the walkthrough and (ii) the receipt of Requesting Carrier's request. The Parties shall then negotiate a reasonable time frame.
- (j) After completion of construction, Requesting Carrier and Ameritech will complete an acceptance walkthrough of all Collocated space requested from Ameritech. Exceptions that are noted during this acceptance walkthrough shall be corrected by Ameritech within thirty (30) days after the walkthrough. Ameritech shall conduct a root cause analysis of all exceptions identified. The correction of these exceptions from Requesting Carrier's original request for Collocation shall be at Ameritech's expense, subject to any change orders requested by Requesting Carrier.

12.12.3 Virtual Collocation.

- (a) If Requesting Carrier requests Virtual Collocation, or if requested Physical Collocation space is not available at a Premises and Requesting Carrier elects Virtual Collocation, and such Virtual Collocation is available at the time of Requesting Carrier's request, Ameritech shall include in its notice to Requesting Carrier described in Section 12.12.1 (i) the space to be provided and (ii) whether Ameritech can deliver the space to Requesting Carrier by the date set forth in Section 12.12.3(c).
- (b) Ameritech and Requesting Carrier will have an initial walkthrough of the Collocated space to be provided to Requesting Carrier for Virtual Collocation on the earlier of (i) ten (10) Business Days after Ameritech's verification of the Virtual Collocation space to be provided to Requesting Carrier and (ii) fourteen (14) days after Ameritech's receipt of Requesting Carrier's request for Virtual Collocation. Ameritech shall within ten (10) Business Days after such walkthrough provide Requesting Carrier with documentation submitted to and received from contractors for any work

being done on behalf of Requesting Carrier that will be billed as extraordinary expenses.

- (c) Ameritech shall deliver to Requesting Carrier the requested space on or before the later of (i) twelve (12) weeks from Ameritech's receipt of Requesting Carrier's request for Virtual Collocation and (ii) such other reasonable date that the Parties may agree upon if it is not feasible for Ameritech to deliver to Requesting Carrier such space within twelve (12) weeks (such date of delivery referred to as the "Delivery Date") and Ameritech notified Requesting Carrier of this fact within ten (10) Business Days after the initial walkthrough.
- (d) Virtual Collocation space ordered by Requesting Carrier will be made available to Requesting Carrier by Ameritech, as more fully described in **Section 3 of Schedule 12.12**.
- (e) After completion of construction, Requesting Carrier and Ameritech will complete an acceptance walkthrough of all Collocation space requested from Ameritech. Exceptions that are noted during this acceptance walkthrough shall be corrected by Ameritech within thirty (30) days after the walkthrough. Ameritech shall conduct a root cause analysis of all exceptions identified. The correction of these exceptions from the original request for Collocation shall be at Ameritech's expense, subject to any change orders requested by Requesting Carrier.
- (f) Ameritech shall install Cross-Connects when cross-connecting for through connect purposes as directed by Requesting Carrier at the rates provided at Item VII of the Pricing Schedule.

12.13 Pricing. The prices charged to Requesting Carrier for Collocation are set forth at Item VII of the Pricing Schedule.

12.14 Billing. Ameritech shall bill Requesting Carrier for Collocation pursuant to the requirements of **Article XXVII** to this Agreement.

12.15 Common Requirements. The requirements set forth on **Schedule 12.15** shall be applicable to both Physical and Virtual Collocation.

12.16 Additional Requirements. The additional requirements set forth on **Schedule 12.16** shall be applicable to Physical Collocation.

12.17 Protection of Service and Property.

Both Parties shall exercise reasonable care to prevent harm or damage to the other Party, its employees, agents or Customers, or their property. Both Parties, their employees, agents, and representatives agree to take reasonable and prudent steps to ensure the adequate protection of the other Party's property and services, including:

12.17.1 Ameritech and Requesting Carrier shall restrict access to Requesting Carrier equipment, support equipment, systems, tools and data, or spaces which contain or house Requesting Carrier equipment enclosures, to Requesting Carrier employees and other authorized non-Requesting Carrier personnel to the extent necessary to perform their specific job function.

12.17.2 Requesting Carrier shall comply at all times with security and safety procedures and existing requirements that are defined by Ameritech and communicated to Requesting Carrier.

12.17.3 Ameritech shall allow Requesting Carrier periodically to inspect or observe spaces which house or contain Requesting Carrier equipment or equipment enclosures and furnish Requesting Carrier with keys, entry codes, lock combinations, and other materials or information which may be needed to gain entry into any secured Requesting Carrier space, subject to Section 12.17.2 and Article XX and, in the case of Virtual Collocation, payment by Requesting Carrier of the cost of Ameritech escorts.

12.17.4 For Physical Collocation, Ameritech shall furnish to Requesting Carrier a current written list of Ameritech's employees who Ameritech authorizes to enter Requesting Carrier's Physical Collocation space.

12.17.5 Ameritech shall, where practicable, secure external access to the Physical Collocation space on its Premises in the same or equivalent manner that Ameritech secures external access to spaces that house Ameritech's equipment.

12.17.6 For Physical Collocation, Ameritech shall limit the keys used in its keying systems for Requesting Carrier's specific Physical Collocation space which contain or house Requesting Carrier equipment or equipment enclosures to its employees and representatives to emergency access only. Requesting Carrier shall further have the right, at its expense, to have locks changed where deemed necessary for the protection and security of such spaces, provided that Requesting Carrier shall immediately provide Ameritech with such new keys.

12.17.7 Ameritech shall use its existing back-up and recovery plan in accordance with its standard policies for the specific Central Office.

12.18 Alternative Collocation Arrangements.

- (a) If Ameritech files a federal or state tariff with the FCC or the Commission, as applicable, which provides for collocation arrangements not otherwise covered in this Agreement, Requesting Carrier may purchase such collocation arrangements at the rates and on the terms and conditions provided in such approved tariff. Requesting Carrier may utilize such tariffed collocation arrangements for the purposes set forth in Section 12.1.
- (b) In addition to the collocation arrangements described in this Article XII, within thirty (30) days of Requesting Carrier's written request, the Parties will commence good faith discussions regarding the provision of alternative collocation arrangements that Requesting Carrier proposes that are not otherwise provided in this Agreement (e.g., "cage-less" Physical Collocation); provided, however, that nothing in this Section 12.18(b) shall impose an obligation upon Ameritech to implement or make available such alternative arrangements.

ARTICLE XIII

NUMBER PORTABILITY -- SECTION 251(b)(2).

13.1 Provision of Local Number Portability. Each Party shall provide to the other Party, Local Number Portability in accordance with the requirements of the Act. For purposes of this Article XIII, "Party A" means the carrier from which a telephone number is ported, and "Party B" means the carrier to which a telephone number is ported.

13.2 Interim Number Portability ("INP"). The Parties agree to provide INP on a reciprocal basis between their networks to enable their Customers to utilize telephone numbers associated with a Telephone Exchange Service provided by one Party, in conjunction with a Telephone Exchange Service provided by the other Party, upon the coordinated or simultaneous termination of the first Telephone Exchange Service and activation of the second Telephone Exchange Service. The Parties shall provide reciprocal INP via remote call forwarding ("RCF"), Direct Inward Dialing ("DID") or through NXX Migration; provided, in each case that the Customer whose telephone number is subject to INP remains within the same serving Central Office. To the extent technically feasible, Interim Number Portability will be provided by each Party with minimum impairment of functionality, quality, reliability and convenience to subscribers of the other Party's services.

13.3 Remote Call Forwarding ("RCF").

13.3.1 Subject to Section 13.2, if a Telephone Exchange Service Customer of Party A elects to become a Telephone Exchange Service Customer of Party B, such Customer may elect to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it shall now receive from Party B. Provided that Party B has complied with the requirements of Section 10.11.1 and has issued an associated service order to Party A to assign